DOCUMENT RESUME

ED 350 793 EC 301 606

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TITLE A Comparison of Two States' MR Court Challenges.
PUB DATE Aug 92
NOTE 9p.; Paper presented at the Annual Convention of the American Psychological Association (100th, Washington, DC, August 14-18, 1992).
PUB TYPE Speeches/Conference Papers (150) -- Viewpoints (Opinion/Position Papers, Essays, etc.) (120)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Community Programs; *Court Litigation; Cultural Awareness; Cultural Differences; *Deinstitutionalization (of Disabled); *Economic Factors; Government Role; *Mental Retardation; Normalization (Handicapped); *Political Influences; State Government; State Programs
IDENTIFIERS *New Hampshire; *New Mexico

ABSTRACT

This paper examines two states operating under Federal Court Orders concerning deinstitutionalization of individuals with mental retardation. New Hampshire is presented as a state in which sociopolitical realities have interfered with efforts to monitor the quality of care, as the Laconia State School was closed for economic reasons, thereby interrupting staff development, quality assurance, realistic case management, and the availability of quality treatment. Efforts to ensure quality of care for institutionalized individuals in New Mexico led to the court ruling that the State is under no constitutional duty to provide substantive services for those within its borders who are not institutionalized. The paper points out that often clinical/legal reasons are cited as the reasons for deinstitutionalization (such as least restrictive environment), when the actual reasons are economic or political. The paper also cites the lack of cultural sensitivity available in either institutional or community settings. The paper concludes that New Mexico must be willing to guarantee that care is provided across domains, including the community, in the areas of food, shelter, clothing, medical care, safety, and protection from abuse. (JDD)

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A COMPARISON OF TWO STATES' MR COURT CHALLENGES

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New Hampshire and New Mexico seem worlds apart on the surface and they are when looking only at their geographic and demographic composition. Nonetheless, they do share attributes relevant to the nature and extent of care provided for their MR citizens. Specifically, both are politically and economically conservative rural, border states with a substantial bilingual (French-Canadian/Hispanic) influence which transcends the national boundaries.

The question is: Can New Mexico avoid the abandonment of quality care that New Hampshire has experienced in the name of deinstitutionalization. Both Federal Court Orders appear identical despite an eight year difference. Both portend to subscribe to high clinical/legal ideals which the advocates claim will have no other effect than to rectify the abuses and neglect documented in the respective court orders. Unfortunately, the New Hampshire experience has not been the success that many intended. A deep-seated recession has forced a dramatic change in the clinical/legal ideals. Instead, the socio/political realities are such that the quality of care can not be monitored as well as when

these efforts were consolidated under the institutional umbrella (French, 1983).

January 31, 1991 spelled the end to *Garrity, et al, v. Governor Sununu(1981).* This class-action suit brought about the Federal Court Order which began in 1981. Its intent, like that of New Mexico's 1989 Federal Court Order, *Jackson, et al, v. Stanton Hospital & Training School, et al,* was to correct abuses such as the misuse of restraints (chemical & physical), physical and mental safety issues, the right to refuse treatment, medical care, and individualized treatment considerations. These issues come under the broad heading: the quality of care under the least restrictive environment.

Lauded as taking a progressive lead in the MR deinstitutionalization effort it was noted in the April 1991 **TASH Newsletter:**
"While many states have enunciated various commitments to community developmental services, only New Hampshire has a system of services that operates without an institution. Ironically (and perhaps fortuitously), the state never announced its intention to close Laconia." The federal judge and many other unsuspecting advocates were deceived by this socio/political intent in the closing of the Laconia State School. What is not mentioned is the deceit and deaths associated with this

process.

In New Hampshire, staff development, staff screening, quality assurance, realistic case management and the availability of quality treatment were the first casualties of deinistitutionalization (French, 1983). The closing of the Laconia State School was actually for economic reasons under Governor Sununu and not in order to foster the ideals stated in the Federal Court Order as agreed upon by former Governor Gallen. Can the movement in New Mexico be moderated so that these abuses can be avoided? The author, who worked as a staff psychologist at the Laconia State School from 1981 until 1989 and who now is the Chair of the Department of Counseling and Psychology at Western New Mexico University, looks at both federal court orders and with an eye on preventive measures which will likely maintain the letter of the law regarding *Jackson, et al, v. Ft. Stanton Hospital & Training School, et al (1989).*

The New Mexico Situation

"On October 27, 1989, the United States Department of Justice instituted a suit against the State of New Mexico, LLH&TS (state schools) and various other state defendants for violation of the Civil Rights of Institutionalized Persons Act, 42 U.S.C., 1997 et seq. United States of

America v. State of New Mexico, et. al., No. 89-1165, complaint ((D.N.M. Oct. 27, 1987). The parties entered into a Settlement Agreement, filed on February 2, 1990, which requires that LLH&YS conduct adequate evaluations and training for the residents; that seclusion and bodily restraints be administered only pursant to the judgement of qualified professionals; that residents be provided medical care; that LLH&TS employ a sufficient number of physicians, registered nurses, licensed practical nurses, psychologists, physical therapists, occupational therapists, and direct care workers; the psychotropic medications be administered only pursuant to the exercise of professional judgement; that the staff be appropriately trained; and that the institution maintain an adequate recordkeeping system (pg 25)."

However, drawing on *Youngberg v. Romeo* (1982), the landmark U. S. Supreme Court Decision relevant to the institutionalized MR, the Court in the New Mexico suit noted that while the state was compelled to provide certain services and care to its institutionalized population (such as State School residents) -- **it (the State) is under no constitutional duty to provide substantive services for those within its border who are not institutionalized** (pg 142). Clearly, this allows for "political/economic" abuses of clinical/legal approaches toward

deinstitutionalization.

Latent versus Manifest Factors

Clinical/legal reasons are given as the manifest goals for deinstitutionalization (mainstreaming, least restrictive environment...) yet what usually emerges are more unfortunate (latent) ends. In New Hampshire, under Governor Sununu, the latent function was indeed the intended purpose -- and many feel it was done merely for economic (political) reasons (see Garrity v. Sununu, I981-89). Indeed, today many of the former clients are: (1) either underserved within the community mental health system (area agencies); (2) living on the streets; or (3) are incarcerated within the criminal justice system. More significantly, those who are fortunate enough to be residing in supervised living environments have no protection from the abuses which initiated the federal court order in the first place. At best, undertrained and undereducated staff apply for these low paying positions. Rarely are these their jobs of choice. And, unlike the institutional setting, deviant and criminal behavior is more likely to be concealed in these remote "homes." Lastly, I found that little effort was made to train staff (professional, direct care, or custodial), either in the institutional or community settings, relevant to **cultural sensitivity.** A common

assumption is that the mentally retarded are a class in themself (a myth defused by the U. S. Supreme Court in *City of Cleburne v. Cleburne Living Center, 1985*) and therefore are not influenced by cultural factors. In New Hampshire the French-Canadian clients often responded better to French than to English. I suspect the same is true in New Mexcio with its 19 Pueblo tribes, two Apache Reservations, and the Navajo Nation as well as its substantial Hispanic population. It is foolhardy to assume that just because the "language" of the clinical professions in the United States is English -- that it is the **only**, or even the most desirable, professional language when dealing with clients from different cultures. Obviously, an understanding of the client's culture is equally significant.

Summary

If New Mexico is to avoid the mistakes of New Hampshire in its deinstitutionalization process, it must be willing to guarantee that the areas of care that they cite in the Federal Court Order are provided across domains -- including the community. These include: (1) food, shelter and clothing; (2) adequate medical care; (3) reasonable conditions of safety; and (4) protection from abuse. Given the economic situation in New Mexico I feel that it may well be more convenient to drop to the lowest common political demoninator -- that of dumping its MR clients for

economic purposes. If this happens, they will be following the infamous **Sununu Plan.**

References

City of Cleburne v. Cleburne Living Center, 84 S. Ct. 468 (Sup. Ct. 1985).

French, L. 1983. *The Mentally Retarded and Pseudoretarded Offender,* **Federal Probation,** Vol. 46 (3): 55-61.

French, L. 1986. *Mainstreaming the Mentally Retarded,* **Legal Studies Forum,** Vol. X (2): 215-228.

Garrity, et al v. Governor(s) Gallen/Sununu, 522 F. Supp. 171 (D.N.H. 1981-89)).

Jackson, et al v. Ft. Stanton Hospital & Training School et al, **United States of America v. State of New Mexico, et al No. 89-1165, complaint (D.N.M. Oct. 27, 1989).**

TASH Newsletter, 1991, Vol. 17 (4): 6.

United States of America v. State of New Mexico, No. 8901165, Settlement Agreement (D.N.M. Feb. 2, 1989).

Youngberg v. Romeo 102 S. Ct. 2452 (1982).